

Decision **DRAFT DECISION OF ALJ ECONOME** (Mailed 11/10/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Rulemaking for the Purpose of Amending
General Order 156.Rulemaking 05-08-029
(Filed August 25, 2005)**ORDER AMENDING GENERAL ORDER 156
TO ACHIEVE GREATER REPORTING UNIFORMITY****I. Summary**

We amend General Order (GO) 156 to achieve greater reporting uniformity in the utilities' annual GO 156 reports.

II. GO 156

In 1986, the California Legislature enacted a series of statutes to ensure that a fair proportion of total utility contracts and subcontracts for products and services are awarded to women, minority, and disabled veteran business enterprises (WMDVBE). (See generally Pub. Util. Code §§ 8281-8286.) The purpose of these statutes is to (a) encourage greater economic opportunity for women, minority, and disabled veteran business enterprises; (b) promote competition among regulated public utility suppliers to enhance economic efficiency in the procurement of electrical, gas, and telephone corporations' (and their affiliates') contracts; and (c) clarify and expand the program for the utilities' procurement of products and services from WMDVBE enterprises. (See §§ 8281(b) (2).)

In April 1998, the Commission promulgated GO 156 in order to implement Pub. Util. Code § 8281 *et seq.* (See Decision (D.) 88-04-057, 28 CPUC2d 36.) The Commission has amended GO 156 several times after that, most recently by D.03-11-024.

III. The Order Instituting Rulemaking (OIR)

A. D.03-11-024

This OIR came about because of an issue the Commission reserved in D.03-11-024 for a subsequent workshop and decision. D.03-11-024 amended GO 156 to eliminate the ability of the utility to create an “excluded category” of products or services from the base of WMDVBE procurement dollars. D.03-11-024 also directed that one unresolved issue be sent to a workshop because the rulemaking resulted in no workable proposals. The issue was how to achieve greater uniformity in reporting WMDVBE information in the utilities’ annual reports. D.03-11-024 recognized that in order to achieve uniformity in WMDVBE reporting, the utilities would have to use the same categories with agreed-upon definitions.

B. The Workshop

The Commission’s Consumer Service and Information Division (CSID) held the required workshop and issued a workshop report on June 3, 2004. Most of the participants in the workshop proposed that WMDVBE information be reported pursuant to the Standard Industrial Classification (SIC) system, although Nextel of California, Inc. (Nextel) recommended that the information be reported pursuant to the United Nations Standard Product and Service Coding (UNSPSC).

According to the workshop report, the Joint Utilities¹ state that the SIC system is the most widely used and understood system in California. The Commission's WMDVBE clearinghouse operator uses the SIC system to categorize and identify the type of businesses that vendors operate. The Joint Utilities are unaware of any system superior to the SIC system that could be used to achieve uniformity of reporting WMDVBE information. The Joint Utilities provided a detailed SIC system definition of each procurement category developed by the United States Department of Labor, together with a web-site address for on-line access to this information.

Nextel was the only workshop participant to object to the use of the SIC system. Nextel explains it does not collect SIC codes from suppliers and vendors, and therefore, does not have its information available on this basis. Nextel explains that it is launching the UNSPS system, which would provide a listing of about 250 procurement categories.

C. The Proposal

The OIR proposes to amend GO 156 so that the utilities will file their annual WMDVBE reports pursuant to the SIC system. Accordingly, the rulemaking proposes adding a new sub-section to GO 156, Section 1.3 (Definitions) as follows:

¹ The Joint Utilities identified in the workshop report include AT&T Communications of California, Inc., Pacific Gas and Electric Company, Pac-West Telecommunications, Inc., SBC California, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Gas Company, Southern California Edison Company, Southwest Gas Corporation, SureWest Telephone, Verizon California, Inc., and WorldCom, Inc.

“Section 1.3.21 ‘Product and service categories’ means product and service categories as defined by the Standard Industrial Classification (SIC) system maintained by the United States Department of Labor, Occupational Safety and Health Administration, as they currently read or as amended.”

The OIR noted that Nextel objected to adopting the SIC system primarily because this utility does not use the SIC system to organize its procurement categories. Presumably, Nextel would argue that organizing its information according to the SIC system solely for the WMDVBE annual report would be expensive and burdensome. However, the OIR noted that GO 156 has a provision to address situations of undue hardship.

GO 156, Section 1.1.3 provides:

“In cases where the application of any of these rules results in undue hardship or unreasonable expense to a utility, the utility may request relief by filing an application in accordance with the Commission’s Rules of Practice and Procedure. Where the relief requested is of minor importance or temporary in nature, the utility may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on all parties on the service list of this proceeding.”

The rulemaking reasoned that Nextel or another similarly situated utility may utilize Section 1.1.3 if the facts so warrant. In any such application to the Commission, we would expect a utility to clearly set forth, among other things, the facts constituting undue hardship; a detailed explanation of the reporting categories it proposes to substitute for the SIC system; how these categories compare with those used by the SIC system; and how reporting uniformity is not substantially compromised by the requested relief.

IV. Procedural Background

The OIR called for parties to file comments and replies no later than September 26 and October 11, 2005, respectively. The Joint Utilities were the only party to file such comments.²

The OIR preliminarily categorized this proceeding as quasi-legislative for which no hearings are likely to be required, but directed parties believing that hearings are necessary to so state in their comments. No party objected to the categorization, and no party believed that hearings are necessary. The Scoping Memo, issued on October 19, 2005, confirmed the categorization and that hearings are not necessary.

V. Discussion

Achieving uniform reporting by adopting the SIC system makes sense, because this system is commonly used and accepted by most of the utilities at the workshop, government agencies, and the business community. Moreover, the Commission's clearinghouse also uses this system. We therefore adopt a new sub-section 1.3.21 to GO 156 as modified below.

In their comments, the Joint Utilities state that, to their knowledge, no utility currently uses the SIC codes for accounting because they were not designed for accounting purposes. However, the Joint Utilities are preparing to adapt their current internal procurement reporting systems to accommodate two-digit SIC codes, including a written description of the relevant categories, to

² The composition of the Joint Utilities differs somewhat from the composition at the time comments to the workshop report were filed. The Joint Utilities filing comments to the OIR did not include AT&T Communications of California, Inc. and included SBC ASI and SBC LD.

track WMDVBE purchases. The Joint Utilities explain that further reporting beyond the two-digit level is impractical and of questionable value. For example, using a four-digit SIC level would require utilities to report spending for over 1,000 categories of goods and services, many of which the utilities do not use. Also, several utility companies would incur significant costs to modify existing accounting programs and methods to capture data at the four-digit level. The Joint Utilities also state that providing very detailed information could also raise confidentiality concerns by providing sensitive information on a utility's spending patterns. Accordingly, the Joint Utilities recommend amending the OIR's proposal to limit reporting to product and service categories as defined by the two-digit SIC system. No party objects to this refinement.

The Joint Utilities' refinement to our proposal is reasonable because it achieves uniformity of reporting by a system that is practical to implement and should not cause unrelated problems such as confidentiality concerns. We therefore modify our proposal accordingly.

In the OIR, we noted that Nextel objected at the workshops to adopting the SIC system primarily because it did not use the SIC system to organize its procurement categories. Nextel did not file comments to this OIR. Presumably, the modification we make to our proposal to limit reporting to the two-digit SIC system will address most of these concerns. Additionally, as stated in the OIR, Nextel or another similarly situated utility may utilize the provisions of Section 1.1.3 of GO 156, as stated above, if the facts so warrant. Any such application should include the detail required by the conclusions of law in today's decision.

Finally, in their comments to the OIR, the Joint Utilities request that the Commission implement the SIC reporting method beginning with the WMDVBE

2006 reports rather than the 2005 reports, as we indicated in the OIR. The Joint Utilities state that there may be insufficient time between when the Commission issues its final decision in this OIR and when the reports are due by the March 1, 2006, to make systematic changes to their reporting.

Although the OIR and Scoping Memo projected that the final decision in this matter would issue no earlier than 30 days after the draft decision mails on December 12, 2005, we mail the draft decision earlier than projected. Also, the OIR proposing this change, and indicating it should be implemented in the 2005 reports, was issued in August 2005. We believe this is sufficient time to implement this change. If an individual utility has a problem implementing such a change, it can apply according to the appropriate procedure for a brief extension of the due date for filing its 2005 report, with detailed justification as to why it could not implement such a change.

VI. Comments on the Draft Decision

The draft decision of the administrative law judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No party filed comments on the draft decision and we adopt it.

VII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this Rulemaking.

Findings of Fact

1. D.03-11-024 directed that the issue of how to achieve greater uniformity in reporting WMDVBE information in the utilities' annual reports be sent to a workshop, with the idea of opening a new rulemaking to adopt reasonable workshop recommendations.

2. This OIR, issued after workshops were held, proposed that GO 156 be modified to achieve greater uniformity in reporting by reporting according to product and service categories as defined by the SIC system maintained by the United States Department of Labor, Occupational Safety and Health Administration, as they are currently read or amended.

3. The Joint Utilities can adapt their current internal procurement reporting systems to accommodate two-digit SIC codes, but further reporting beyond the two-digit level is impractical and of questionable value.

4. GO 156, Section 1.1.3 has a provision to address situations of undue hardship in applying the GO.

Conclusions of Law

1. The OIR's proposal should be modified to limit reporting to a two-digit SIC code system.

2. GO 156 should be amended as modified by this decision and as set forth in the ordering paragraphs.

3. This definition should apply to the utilities' 2005 annual reports filed by March 1, 2006.

4. If any utility uses the provisions of GO 156, Section 1.13 addressing undue hardship to seek Commission permission to use a reporting system other than the one adopted by today's decision, any such application should set forth, among other things, the facts constituting undue hardship; a detailed explanation of the reporting categories the utility proposes to substitute for the SIC system; how these categories compare with those used by the SIC system, and how reporting uniformity is not substantially compromised by the requested relief.

5. This decision should be effective immediately so that the utilities can incorporate its requirements into their 2005 annual reports.

IT IS ORDERED that:

1. General Order (GO) 156 is amended as set forth below.
2. The following new sub-section is added to GO 156, Section 1.3

(Definitions) as follows:

“Section 1.3.21 ‘Product and service categories’ means product and service categories as defined by the two-digit Standard Industrial Classification (SIC) system maintained by the United States Department of Labor, Occupational Safety and Health Administration, as they currently read or are amended.”

3. The utilities shall use the definition set forth in Section 1.3.21, adopted by today’s decision, in their GO 156 2005 annual reports filed by March 1, 2006.
4. Rulemaking 05-08-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.